



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0582; FRL-9845-2]

Approval and Promulgation of Implementation Plans; Tennessee; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a portion of the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the prevention of significant deterioration (PSD) related infrastructure requirements of the Clean Air Act (CAA or Act) for the 2008 Lead national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 2008 Lead NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as “infrastructure submission”). Tennessee provided to EPA an infrastructure submission on October 19, 2009, to address the infrastructure requirements for the 2008 Lead NAAQS, however the subject of this notice is limited to the PSD-related infrastructure elements. All other applicable Tennessee infrastructure elements have been addressed in a separate rulemaking.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0582. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9152. Mr. Farngalo can be reached via electronic mail at farngalo.zuri@epa.gov.

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements of the section 110(a) infrastructure SIP for purposes of the 2008 Lead NAAQS are listed below¹ and in EPA’s October 14, 2011, memorandum entitled” Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS).”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today’s final rulemaking does not address the section 110(a)(2)(C) and (J) infrastructure elements as they relate to the requirement as part D, Title I of the CAA

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.³
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the primary and secondary Lead NAAQS. The revised primary and secondary Lead NAAQS were revised to 0.15 µg/m³. Tennessee provided its infrastructure submission for the 2008 Lead NAAQS on October 19, 2009.

On March 20, 2013, EPA proposed to approve, and in the alternative, conditionally approve in part, Tennessee's 2008 Lead NAAQS infrastructure SIP. In that proposed action, EPA explained that the Agency was proposing to conditionally approve the PSD-related portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (hereafter referred to as prong 3 of 110(a)(2)(D)(i)),⁴ and 110(a)(2)(J), and a portion of section 110(a)(2)(E)(ii) of Tennessee's October 19, 2009, infrastructure submission because Tennessee's SIP (at the time of EPA's proposal) did not include provisions to comply with all of the requirements associated with the aforementioned sections. Further, in the proposal, EPA explained that Tennessee had committed to submit SIP

³ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

⁴ Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

revisions to address these deficiencies. As such, EPA also proposed, in the alternative, to approve the entire Tennessee SIP, including the sections described above, as meeting the applicable infrastructure requirements for the 2008 Lead NAAQS, and explained that should Tennessee submit, and EPA approve, the necessary provisions to correct the identified infrastructure SIP deficiencies prior to EPA taking final action on the October 19, 2009, infrastructure submission, that EPA anticipated finalizing full approval of the infrastructure SIP. It was also explained that, if EPA did not approve necessary provisions prior to taking final action on the October 19, 2009, infrastructure submission, EPA anticipated finalizing conditional approvals for those elements for which the Tennessee infrastructure SIP remained deficient. *See* 78 FR 17168. On June 18, 2013, EPA took final action on a majority of Tennessee's October 19, 2009, submissions with regards to the 2008 Lead NAAQS. *See* 78 FR 36440. Today's final rulemaking takes action on the remaining required elements of Tennessee's October 19, 2009, SIP revision (110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) as each relates to PSD requirements) regarding the infrastructure requirements for the 2008 Lead NAAQS.

The PSD-related requirements of section 110(a)(2)(C), prong 3 of section 110(a)(2)(D)(i), and section 110(a)(2)(J) include four necessary SIP revisions to address required changes to the State's part C PSD permit program. The first revision was required by the November 29, 2005, Ozone Implementation Rule New Source Review (NSR) Update - Phase 2 Rule (hereafter referred to as the Ozone Implementation NSR Update). Among other requirements, the Ozone Implementation NSR Update required that SIPs include the recognition of nitrogen oxides as a precursor for ozone consistent with 40 CFR 51.166 and 40 CFR 52.21. *See* 70 FR 71612. In addition to the Ozone Implementation NSR Update, there are three other requirements that states must satisfy in order to meet the PSD-related requirements of section

110(a)(2)(C), prong 3 of section 110(a)(2)(D)(i), and section 110(a)(2)(J). These three revisions are related to (1) the “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (June 3, 2010, 75 FR 31514), (2) the NSR PM_{2.5} Rule (May 16, 2008, 73 FR 28321), and (3) the portion of the final rulemaking entitled “Final Rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant monitoring Concentration (SMC): Final Rule” that relates to the PM_{2.5} PSD increments requirements (hereafter referred to as the PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} PSD Increments)) (75 FR 64864).

Tennessee’s SIP has been revised to meet each of the above PSD-related requirements. Specifically, Tennessee’s Ozone Implementation NSR Update SIP revision was submitted by TDEC on May 28, 2009, and approved by EPA on February 7, 2012. *See* 77 FR 6016. Tennessee submitted its Greenhouse Gas (GHG) Tailoring Rule SIP revision to EPA on January 11, 2012, and EPA approved it on February 28, 2012. *See* 77 FR 11744. Tennessee submitted its NNSR SIP revision related to the implementation of the NSR PM_{2.5} Rule on July 29, 2011, and EPA approved this revision on July 30, 2012. *See* 77 FR 44481. Lastly, on May 10, 2013, Tennessee submitted a SIP revision to satisfy the requirements of the PSD PM_{2.5} Increments, SILs and SMC Rule, and the final rulemaking for this SIP revision was published on July 23, 2013. *See* 78 FR 44886.

II. This Action

EPA is taking final action to approve Tennessee’s infrastructure submission as demonstrating that the State meets the PSD-related requirements of section 110(a)(2)(C), prong 3

of section 110(a)(2)(D)(i), and section 110(a)(2)(J) of the CAA for the 2008 Lead NAAQS.

Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. Tennessee, through TDEC, certified that the Tennessee SIP contains provisions that ensure the 2008 Lead NAAQS is implemented, enforced, and maintained in Tennessee. EPA received no adverse comments on its March 20, 2013, proposed approval of Tennessee’s October 19, 2009, infrastructure submission pertaining to section 110(a)(2)(C), prong 3 of section 110(a)(2)(D)(i), and section 110(a)(2)(J). EPA has determined that the Tennessee infrastructure submission, adequately addresses the PSD-related requirements of section 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) of the CAA for the 2008 Lead NAAQS, and is consistent with section 110 of the CAA.⁵

III. Final Action

EPA is taking final action to approve, Tennessee’s October 19, 2009, submission as demonstrating that the State meets the PSD-related requirements of section 110(a)(2)(C), prong 3 of section 110(a)(2)(D)(i), and section 110(a)(2)(J) of the CAA for the 2008 Lead NAAQS because this submission is consistent with section 110 of the CAA. TDEC has addressed the aforementioned elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA’s November 12, 2008, guidance to ensure that the 2008 Lead NAAQS are implemented, enforced, and maintained in Tennessee.

⁵ As described above, in a previous rulemaking, EPA took action on Tennessee’s October 19, 2009, submission for all other required infrastructure elements associated with the 2008 Lead NAAQS. *See* 78 FR 36440.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the

finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated July 31, 2013

Beverly H. Banister

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATIONS OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

3. Section 52.2220(e), is amended by adding an entry “110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.2220 Identification of plan.

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(e) * * *

EPA-Approved Tennessee Non-regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards	Tennessee	10/19/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	This approval is for sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) only.

[FR Doc. 2013-19360 Filed 08/09/2013 at 8:45 am; Publication Date: 08/12/2013]